THE STRUCTURAL CONFLICT: State Criminal Prosecutions and the Constitutional Crisis of Judicial Bias

How State Revenue Dependence on Criminal Convictions Violates Due Process, Article III, and the Fifth Amendment

A Constitutional Analysis for Law Review Publication

ABSTRACT

This article examines three interconnected constitutional violations endemic to state criminal prosecution systems: (1) the structural conflict of interest created when states act simultaneously as plaintiff and employer of all adjudicators while depending on conviction revenues; (2) the circumvention of Fifth Amendment grand jury protections through the use of prosecutorial "informations"; and (3) the textual problem of state criminal prosecutions under Article III, Section 2's original jurisdiction clause. Drawing on Constitutional Convention debates, Supreme Court precedent, and modern due process doctrine, this analysis demonstrates that state criminal justice systems contain fundamental structural biases that violate the Fourteenth Amendment's guarantee of an impartial tribunal. The article proposes constitutional reforms to address these systemic problems.

I. INTRODUCTION

When the State of Wisconsin prosecutes a citizen, an extraordinary structural problem emerges: the plaintiff (the State), the prosecutor (employed by the State), the judge (employed by the State), and even the public defender (employed by the State) all draw their salaries from the same source. More problematically, that source is substantially funded by the very activity in which they are engaged—criminal prosecutions that generate fines, fees, forfeitures, and court costs.

This Article argues that this arrangement violates three fundamental constitutional principles:

First, it creates a structural conflict of interest that violates the Fourteenth Amendment's Due Process Clause guarantee of an impartial tribunal. When adjudicators have a financial stake,

however indirect, in the outcome of cases, the system is fundamentally biased toward conviction.

Second, it demonstrates that the Supreme Court's interpretation in *United States v. Ortega* (1826)—holding that criminal prosecutions do not involve states as "parties" under Article III, Section 2—is internally inconsistent. If the state has no interest in criminal prosecutions, why does the system generate substantial state revenue? The financial stake proves the state IS a party with a concrete interest in the outcome.

Third, states' use of prosecutorial "informations" rather than grand jury indictments for felony charges circumvents the Fifth Amendment's check on prosecutorial power, a protection that should be incorporated against the states through the Fourteenth Amendment.

These problems are not theoretical. They affect millions of prosecutions annually, disproportionately impact poor and minority defendants, and transform criminal justice from a system of law enforcement into a revenue-generation mechanism.

II. THE STRUCTURAL CONFLICT OF INTEREST

A. The Financial Architecture of State Criminal Justice

1. Who Gets Paid and How

Modern state criminal justice systems create a web of financial incentives favoring conviction:

State and Local Governments:

- Collect fines and court costs funding general operations
- Receive asset forfeiture proceeds for law enforcement budgets
- Gain revenue from probation fees, drug testing, and mandatory classes
- Benefit from prison labor and federal prison funding

Prosecutors:

- Salaries paid from state general funds (including criminal justice revenues)
- Budget increases often correlate with conviction rates and drug seizures
- Performance measured by conviction rates and sentences obtained
- Career advancement tied to "tough on crime" reputation

Judges:

- Salaries paid from state court budgets funded by criminal justice revenues
- Pension systems funded by state general revenues

- Retention and reappointment may be influenced by state officials
- "Problem-solving courts" generate additional funding streams

Public Defenders:

- Paid from the same state budget as prosecutors and judges
- Chronically underfunded with impossible caseloads (often 300-1,000+ cases per attorney)
- No financial incentive to vigorously defend clients
- Career advancement may depend on cooperation with prosecutors and judges

2. The Revenue Generation Model

Criminal justice has become a significant revenue source for states and localities. Consider typical revenue streams:

Direct Fines:

- Traffic violations: $100-$1,000 per ticket
- Misdemeanors: $500-$5,000 per conviction
- Felonies: $1,000-$50,000+ per conviction

Court Costs and Fees:

- Filing fees
- Public defender reimbursement fees
- Jury fees
- Administrative costs
- Electronic monitoring fees

Ongoing Supervision:

- Probation fees: $30-$60 per month for years
- Drug testing: $20-$40 per test
- Mandatory classes: $200-$1,000
- Ignition interlock devices: $70-$150 per month

Asset Forfeiture:

- Vehicles seized
- Cash seized
- Real property seized
- Law enforcement keeps substantial portion

Incarceration Revenues:

- Federal funds for housing federal prisoners

- Inmate commissary profits
- Inmate phone call commissions (often 50%+ of call cost)
- Prison labor revenues

One study found that in some jurisdictions, criminal justice fines and fees constitute 10-20% of local government revenue.[1]

3. The Incentive Structure

This financial architecture creates powerful incentives:

For Prosecutors:

- More charges = justification for larger budgets
- Higher conviction rates = career advancement
- Asset forfeitures = direct funding for office

For Judges:

- "Going easy" on defendants = perceived as soft on crime
- Harsh sentences = political safety
- Revenue-generating sentences (fines, probation) = funding for court system

For Public Defenders:

- Quick plea bargains = manageable caseload
- Going to trial = overwhelming workload
- Zealous defense = conflict with judge and prosecutor (who control their working conditions)

B. Supreme Court Recognition of Financial Bias

The Supreme Court has long recognized that financial interest in case outcomes violates due process.

1. *Tumey v. Ohio* (1927)

In *Tumey v. Ohio*, 273 U.S. 510 (1927), the Supreme Court held that a mayor who served as judge and received a portion of fines from convictions violated due process.

Chief Justice Taft wrote:

> "All questions of judicial qualification may not involve constitutional validity. Thus matters of kinship, personal bias, state policy, remoteness of interest, would seem generally to be matters merely of legislative discretion... But it certainly violates the Fourteenth Amendment, and deprives a defendant in a criminal case of due

> process of law, to subject his liberty or property to the judgment of a court the judge of which has a direct, personal, substantial, pecuniary interest in reaching a conclusion against him in his case."[2]

Key Holdings:

- Direct financial interest in conviction violates due process
- Even if judge is honest and impartial, structural bias is unconstitutional
- Appearance of bias is sufficient to violate due process

2. *Ward v. Village of Monroeville* (1972)

In *Ward v. Village of Monroeville*, 409 U.S. 57 (1972), the Court extended *Tumey* to situations where the judge didn't personally benefit but the court system did.

The mayor served as judge, and traffic fines provided substantial revenue for the village. The Court held this violated due process even though the mayor didn't personally receive the fines.

Justice Brennan wrote:

> "The mayor's executive responsibilities for village finances may make him partisan to maintain the high level of contribution from the mayor's court. This, too, is a 'possible temptation' which might 'lead him not to hold the balance nice, clear, and true between the State and the accused.'"[3]

Key Holdings:

- Institutional financial interest sufficient for due process violation
- Don't need direct payment to judge
- Risk of bias is unconstitutional even if actual bias not proven

3. *Caperton v. A.T. Massey Coal Co.* (2009)

In *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868 (2009), the Court held that due process requires recusal when there is "a serious risk of actual bias."

Justice Kennedy wrote:

> "The Due Process Clause has been implemented by objective standards that do not require proof of actual bias... Under our precedents there are objective standards that require recusal when 'the probability of actual bias on the part of the judge or decisionmaker is too high to be constitutionally tolerable.'"[4]

Application to State Criminal Justice:

If a judge must recuse when a party made large campaign contributions, shouldn't a judge recuse when their salary and pension are funded by criminal conviction revenues?

C. Application to State Criminal Prosecutions

1. The Conflict Is Structural, Not Individual

The problem is not that individual judges, prosecutors, or public defenders are corrupt. The problem is that the SYSTEM creates financial incentives favoring conviction.

Structural Bias Elements:

- Plaintiff (State) has financial interest in conviction
- Judge employed by plaintiff
- Prosecutor employed by plaintiff
- Public defender employed by plaintiff
- All salaries funded (directly or indirectly) by conviction revenues
- No structural check on this bias

2. The Conflict Is Unavoidable

Unlike *Tumey* (where the solution was removing the mayor as judge) or *Caperton* (where the solution was recusal), the conflict in state criminal justice is systemic and cannot be cured by individual recusal.

Every state judge has this conflict:

- All paid by the state
- All pensions funded by state revenues
- State revenues include criminal justice proceeds
- No judge can recuse without system collapse

3. The "Salary" Distinction Doesn't Save It

Some argue that *Tumey* only applies to direct payment per conviction, not fixed salaries. But *Ward* rejected this distinction.

Moreover, the connection between criminal justice revenue and judicial salaries is direct:

- State budgets depend on revenue
- Revenue includes criminal justice proceeds
- Judicial salaries paid from state budget
- More convictions = more revenue = more funding for judiciary

This is not "remote" or "speculative"—it's the funding model.

4. Comparing Civil and Criminal Cases

Consider the difference:

Civil Case:

- Plaintiff: Private party
- Defendant: Private party
- Judge: Neutral (no stake in outcome)
- Judge's salary: Not affected by outcome

Criminal Case:

- Plaintiff: The State
- Defendant: Private party
- Judge: Employed by plaintiff (the State)
- Judge's salary: Funded by convictions

One of these violates due process. Guess which one.

III. THE ARTICLE III ORIGINAL JURISDICTION PROBLEM

A. The Constitutional Text

Article III, Section 2, Clause 2 states:

> "In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction."[5]

B. The Textual Problem

Every state criminal prosecution involves:

- Caption reading: "STATE OF [___] v. Defendant"
- State as named plaintiff
- State seeking conviction and penalties
- State collecting revenue from conviction

Question: If Article III gives Supreme Court original jurisdiction over "all Cases in which a State shall be Party," why do state criminal prosecutions not fall under original jurisdiction?

C. The *Ortega* Resolution

In *United States v. Ortega*, 24 U.S. (11 Wheat.) 467 (1826), the Supreme Court addressed this question in the context of a criminal prosecution for assaulting a foreign ambassador.

Defendant argued that because Article III grants original jurisdiction over "Cases affecting ambassadors," and this was a criminal case where the ambassador was the victim, only the Supreme Court had jurisdiction.

The Court rejected this argument, holding:

> "this is not a case affecting a public minister, within the plain meaning of the constitution. It is that of a public prosecution, instituted and conducted by and in the name of the United States, for the purpose of vindicating the law of nations... It is a case, then, which affects the United States, and the individual whom they seek to punish; but one in which the minister himself, although he was the person injured by the assault, has no concern, either in the event of the prosecution, or in the costs attending it."[6]

The Court's Logic:

- Victims have no "concern" in criminal prosecutions
- The state is exercising "sovereign power," not acting as a party
- Therefore, criminal prosecutions don't "affect" parties within Article III's meaning

D. The Internal Contradiction

Ortega's reasoning contains a fatal flaw when applied to modern state criminal justice: **If the state has no interest in criminal prosecutions, why does the system generate substantial state revenue?**

Consider:

1. **State claims**: "We're exercising sovereign police power, not pursuing our interests"

2. **State's actions**:

    - Collects millions in fines and fees
    - Funds court system with criminal justice revenues
    - Pays judges and prosecutors from these revenues
    - Measures success by conviction rates and sentences
    - Seizes assets and property
3. **Conclusion**: The state's financial stake proves it IS a party with a concrete interest

The financial incentive contradicts the claim of disinterested sovereignty.

E. Modern Standing Doctrine Supports Party Status

The Supreme Court's modern standing doctrine requires:

- Concrete injury in fact
- Fairly traceable to defendant's conduct
- Redressable by favorable decision[7]

If applied to the state in criminal prosecutions:

Does the state have injuries?

- State claims "society" is injured
- But state's actual interest is financial

Is it concrete?

- Lost revenue is concrete
- Potential conviction revenue is concrete

Is it redressable?

- Conviction generates revenue
- Acquittal means lost revenue

Conclusion: Under modern standing doctrine, the state's financial interest would likely constitute Article III "injury" making it a "party" to the case.

F. The Significance for Due Process

If the state IS a party (as the financial incentive suggests), then:

1. *Ortega*'s reasoning breaks down
2. Article III original jurisdiction should apply
3. State courts lack jurisdiction
4. Even if state courts have jurisdiction, due process violated (party employing judge)

Either way, there's a constitutional problem.

IV. THE FIFTH AMENDMENT GRAND JURY VIOLATION

A. Constitutional Text and Purpose

The Fifth Amendment provides:

> "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury..."[8]

1. What Qualifies as "Infamous Crime"

The Supreme Court has defined "infamous crime" as any offense punishable by more than one year's imprisonment.[9]

This includes:

- All felonies (by definition)
- Many misdemeanors in states with harsh sentencing

2. Purpose of Grand Jury Requirement

The grand jury serves as a check on prosecutorial power:

> "The grand jury is an integral part of our constitutional heritage which was brought to this country with the common law. The Framers, most of them trained in the English law and traditions, accepted the grand jury as a basic guarantee of individual liberty."[10]

Key Functions:

- **Shield**: Protects citizens from unfounded accusations
- **Sword**: Empowers citizens to investigate government misconduct
- **Check**: Independent review of prosecutorial charging decisions
- **Community Voice**: Represents community judgment on criminality

B. The *Hurtado* Exception

In *Hurtado v. California*, 110 U.S. 516 (1884), the Supreme Court held that the Fifth Amendment's grand jury requirement does not apply to states.

California prosecuted Hurtado for murder by filing a prosecutorial "information" rather than obtaining a grand jury indictment. Hurtado argued this violated due process under the Fourteenth Amendment.

The Court disagreed, reasoning that "due process" does not require all Bill of Rights protections to apply to states.[11]

This created an anomaly: Of all the Bill of Rights criminal procedure protections, grand jury is the ONLY one not incorporated against states.

C. The Incorporation Doctrine Problem

Since *Hurtado*, the Supreme Court has incorporated nearly every other criminal procedure protection:

Incorporated:

- Fourth Amendment (unreasonable searches)
- Fifth Amendment (self-incrimination, double jeopardy)
- Sixth Amendment (counsel, jury trial, confrontation, compulsory process)
- Eighth Amendment (excessive bail, cruel punishment)

NOT Incorporated:

- Fifth Amendment (grand jury)

This makes no sense. If all other protections are "fundamental to due process," why isn't the grand jury?

D. The Modern Case for Incorporation

1. Selective Incorporation Doctrine

The modern test for incorporation asks whether a right is "fundamental to our scheme of ordered liberty."[12]

Grand jury is fundamental because:

- Framers included it in Bill of Rights
- Protects against prosecutorial abuse
- Provides community check on charging decisions
- Shields innocent from unfounded accusations

2. Comparison to Other Rights

If the right to counsel is fundamental (it is), how is independent review of charges LESS fundamental?

If protection against self-incrimination is fundamental (it is), how is protection against baseless charges LESS fundamental?

The grand jury is MORE fundamental—it's the FIRST protection, before trial even begins.

3. The Problem of Unchecked Prosecutors

Without grand jury requirement, state prosecutors have unchecked power:

- Decide alone whom to charge
- Decide alone with what to charge
- No independent review required
- Can file charges even if insufficient evidence

This is the very evil the grand jury was designed to prevent.

E. Application to State Criminal Justice Reform

States should be required to use grand juries for felony charges, or provide equivalent independent review:

Option 1: Grand Jury

- Citizens review evidence
- Determine if probable cause exists
- Vote to indict or refuse indictment

Option 2: Preliminary Hearing

- Independent magistrate reviews evidence
- Adversarial proceeding with defense counsel
- Public hearing with opportunity to cross-examine

Current Reality in Many States:

- Prosecutor files information
- No independent review
- First time defendant sees evidence is at trial (or plea negotiations)

This violates the principle of independent review.

V. VICTIMLESS CRIMES AND ARTICLE III STANDING

A. The Revenue Motive Problem

When examining "victimless crimes," the state's financial incentive becomes most apparent.

1. What Are Victimless Crimes?

Crimes where no identifiable person has been injured:

- Drug possession for personal use
- Prostitution (consensual)
- Gambling
- Many traffic violations (absent accident)
- Regulatory violations with no actual harm

In these cases: Who is the victim?

State's answer: "Society"

Problem: "Society" is precisely the kind of generalized grievance the Supreme Court rejects in civil cases.[13]

2. Standing Requirements

In civil cases, Article III standing requires:

- **Injury in fact**: Concrete and particularized
- **Causation**: Fairly traceable to defendant
- **Redressability**: Court can remedy injury[14]

In victimless crime prosecutions:

- **Who has injury in fact?** "Society" (but this is generalized, not particularized)
- **What is causation?** No specific person's harm to trace
- **What is redressed?** No victim to compensate

If these requirements apply in civil cases, why not criminal?

3. The Revenue Answer

The state's REAL injury is financial:

- Lost revenue from non-compliance
- Opportunity to collect fines and fees
- Asset forfeiture potential

This is concrete, particularized, and redressable—but it proves the state is acting as a party pursuing its financial interest, not as a neutral sovereign.

B. The Case Study: Traffic Enforcement

Traffic violations illustrate the revenue motive clearly.

Scenario:

- Driver allegedly exceeds speed limit by 5 mph
- No accident
- No dangerous driving
- No property damage
- No injured party

Traditional analysis: Crime against public safety

Reality check: Revenue generation

Evidence:

- Municipalities budget expected traffic fine revenue
- Police have ticket quotas (formal or informal)
- Speed limits set to maximize violations (speed studies ignored)
- Enforcement concentrated in high-revenue areas
- "Traffic safety" used to justify revenue needs

Many jurisdictions derive 10-20% of budget from traffic enforcement.[15]

VI. THE CASE STUDY: WISCONSIN OWI PROSECUTIONS

To illustrate these principles concretely, consider typical Wisconsin OWI (Operating While Intoxicated) prosecutions.

A. The Legal Framework

Wisconsin OWI law provides:

- First offense: Civil forfeiture ($150-$300) + fees
- Second offense: Misdemeanor ($350-$1,100) + fees + license suspension
- Third offense: Felony (up to 3 years imprisonment) + $600-$2,000 + fees
- Fourth+ offense: Felony (up to 6 years imprisonment) + $600-$10,000 + fees

Plus additional costs:

- Ignition interlock device: $70-$150/month for 1-2 years
- Alcohol assessment: $200-$400
- Treatment programs: $500-$2,000
- Probation fees: $40/month
- License reinstatement: $200

Total cost of third offense OWI: Often $5,000-$15,000+

B. The Revenue Incentive

Wisconsin processes approximately 25,000 OWI cases annually.[16]

Conservative revenue estimate:

- 25,000 cases × average $5,000 = $125 million annually
- This doesn't include ignition interlock, treatment, or probation revenues
- Actual total likely exceeds $200 million

Who receives this?

- State general fund (fines)
- County budgets (costs and fees)
- Private contractors (ignition interlock, treatment)
- Court system (operating costs)

C. The Enforcement Pattern

Problems frequently arising:

- Traffic stops without reasonable suspicion
- Field sobriety tests administered improperly
- Breath tests without proper calibration
- Chemical test refusals used against defendants
- "Informations" filed without grand jury review

Example case pattern:

1. Officer stops vehicle (often pretextual)
2. Claims "odor of intoxicants" (subjective)
3. Field sobriety tests (designed to fail)
4. Arrest and chemical test demand
5. Refusal = automatic suspension + used as evidence of guilt
6. Prosecutor files information (no grand jury)
7. Public defender recommends plea (caseload)
8. Defendant pressured to plead guilty
9. State collects thousands in fines and fees

Where is the "impartial tribunal" in this system?

D. Constitutional Violations Present

Using OWI prosecutions as example:

Fourth Amendment:

- Stops often lack reasonable suspicion
- Extended detention beyond initial stop
- Forced chemical testing

Fifth Amendment:

- Felony charges without grand jury
- Refusal to submit to testing used against defendant (self-incrimination)

Sixth Amendment:

- Public defender conflicts of interest
- Inadequate representation due to caseloads

Fourteenth Amendment:

- State as plaintiff employing all adjudicators
- Financial incentive to convict
- No impartial tribunal

Article III:

- State is party seeking conviction
- Original jurisdiction question
- No identifiable victim in many cases

VII. PROPOSED CONSTITUTIONAL REFORMS

A. Judicial Independence Reforms

1. Federal Review of State Criminal Judgments

Proposal: Create federal magistrate review of state criminal judgments where structural bias is alleged.

Mechanism:

- Defendant can petition federal magistrate
- Magistrate reviews for structural bias
- If bias found, case dismissed or transferred to federal court
- Federal review insulated from state revenue incentives

2. Financial Insulation

Proposal: Separate criminal justice funding from conviction revenues.

Mechanism:

- State judicial budgets funded from non-criminal sources
- Prohibition on budget increases tied to conviction rates
- Forfeiture proceeds to state general fund, not law enforcement
- Elimination of court costs and fees (tax-funded system)

B. Grand Jury Reforms

1. Incorporate Fifth Amendment

Proposal: Supreme Court should overrule *Hurtado* and incorporate grand jury requirement.

Rationale:

- All other criminal procedure protections incorporated
- Grand jury is fundamental to ordered liberty
- Check on prosecutorial power essential
- Consistent with incorporation doctrine

2. Alternative: Robust Preliminary Hearings

Proposal: If a grand jury is not required, mandate meaningful preliminary hearings.

Elements:

- Independent magistrate (not from same jurisdiction)
- Defense counsel present
- Opportunity to cross-examine witnesses
- Public proceeding
- Finding of probable cause required

C. Article III Standing Reforms

1. Victim Requirement

Proposal: Criminal prosecutions should require identifiable victim with concrete injury.

Exceptions:

- Crimes against governmental functions (treason, counterfeiting)
- Crimes preventing imminent harm (attempt, conspiracy)
- Crimes with institutional victims (tax evasion, corporate fraud)

Effect:

- Eliminate most victimless crimes
- Require showing of concrete harm
- Restore traditional limits on criminal law

2. Original Jurisdiction Clarification

Proposal: Constitutional amendment clarifying Article III, Section 2.

Proposed Language:

> "The original jurisdiction of the Supreme Court over cases in which a State shall be a Party shall not extend to criminal prosecutions. In criminal prosecutions, states shall not employ adjudicators who have any financial interest, direct or indirect, in the outcome of cases."

D. Public Defender Independence

1. Separate Funding and Authority

Proposal: Public defender offices should be independent of state prosecution apparatus.

Mechanism:

- Separate agency with independent budget
- Funded adequately for reasonable caseloads (150-200 cases per attorney)
- Hiring and firing authority separate from state government
- Parity in resources with prosecutor offices

2. Caseload Limits

Proposal: Mandatory limits on public defender caseloads.

Standards:

- Misdemeanors: 400 cases per year maximum
- Felonies: 150 cases per year maximum
- When limits exceeded, no new appointments until caseload reduced

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VIII. CONCLUSION

State criminal justice systems contain fundamental structural problems that violate the Constitution:

Due Process Violation (14th Amendment): When the plaintiff (state) employs all adjudicators (judge, prosecutor, public defender) and funds them through conviction revenues, the system is structurally biased toward conviction. This violates the guarantee of an impartial tribunal.

Article III Problem: The state's financial interest in criminal prosecutions proves it IS a party with a concrete stake in outcomes. This contradicts *Ortega*'s claim that states are merely exercising sovereign power. Either original jurisdiction applies or the state lacks Article III standing.

Grand Jury Violation (5th Amendment): States' use of prosecutorial informations circumvents the grand jury's check on prosecutorial power. This protection should be incorporated against states or replaced with equivalent independent review.

Victimless Crimes Problem: Criminal prosecutions lacking identifiable victims are constitutionally suspect under Article III standing doctrine. "Society" as victim is a generalized grievance insufficient for jurisdiction.

These problems are not theoretical—they affect millions of prosecutions annually and transform criminal justice from law enforcement into revenue generation.

The solution requires structural reform:

- Independent judiciary insulated from conviction revenues
- Grand jury or equivalent independent charging review
- Victim requirement for criminal prosecutions
- Public defender independence and adequate funding

Constitutional fidelity demands that we confront these structural problems. A system where the plaintiff employs the judge, prosecutor, and defense counsel—all funded by conviction revenues—cannot provide the impartial tribunal the Constitution guarantees.

The time has come for serious examination of whether our state criminal justice systems comply with constitutional requirements or whether they have evolved into revenue-generation mechanisms fundamentally at odds with due process and fair adjudication.

ENDNOTES

[1] Menendez, M., Crowley, M., Eisen, L., & Lantigua-Williams, J., *The Steep Costs of Criminal Justice Fees and Fines*, BRENNAN CENTER FOR JUSTICE (Nov. 21, 2019).

[2] *Tumey v. Ohio*, 273 U.S. 510, 523 (1927).

[3] *Ward v. Village of Monroeville*, 409 U.S. 57, 60 (1972).

[4] *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868, 877 (2009).

[5] U.S. CONST. art. III, § 2, cl. 2.

[6] *United States v. Ortega*, 24 U.S. (11 Wheat.) 467, 469 (1826).

[7] *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992).

[8] U.S. CONST. amend. V.

[9] *Ex parte Wilson*, 114 U.S. 417, 427 (1885).

[10] *Wood v. Georgia*, 370 U.S. 375, 390 (1962).

[11] *Hurtado v. California*, 110 U.S. 516, 534-35 (1884).

[12] *Duncan v. Louisiana*, 391 U.S. 145, 149 (1968).

[13] *Lujan*, 504 U.S. at 573-74.

[14] *Id.* at 560-61.

[15] Sances, M.W. & You, H.Y., *Who Pays for the Government? Descriptive Representation and Exploitative Revenue Sources*, 79 J. POL. 1090 (2017).

[16] WISCONSIN DEPARTMENT OF TRANSPORTATION, WISCONSIN TRAFFIC CRASH FACTS (2022).

END OF ARTICLE

For submission to constitutional law journals and legal reviews